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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/533,695

11/09/2005

Wilfried Blanc

RN02141

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Rhodia Inc.
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07/31/2008

EXAMINER

AHVAZI, BIJAN

ART UNIT

PAPER NUMBER

4171

MAIL DATE

DELIVERY MODE

07/31/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/533,695	Applicant(s) BLANC ET AL.	
	Examiner Bijan Ahvazi	Art Unit 4171	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 10, 13, 14, and 18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11, 15, 17, and 20 of copending Application No. (US 11/547,154). Although the conflicting claims are not identical, they are not patentably distinct from each other because the applicant claims are deemed to be in the same scope of the referenced pending claims. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application.

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4. Claims 10, 13, 14, and 18 are directed to a light transforming material, in particular for greenhouse walls, comprising a matrix which is based on polymer, wherein the matrix is based on a polymer selected from the group consisting of low-density polyethylenes, linear low-density polyethylenes, polyethylenes obtained by metallocene synthesis, polyvinyl chloride, polyethylene terephthalate, polystyrene, polymethyl methacrylate and an additive a barium and magnesium silicate of formula; $Ba_{3(1-x)}Eu_{3x}Mg_{1-y}Mn_ySi_2O_8$, wherein $0 < x \leq 0.3$ and $0 < y \leq 0.3$, wherein material is capable of transforming solar energy of UV range into a red light. Said material can also be used in paints and cosmetics. The claims 11, 15, 17, and 20 of copending Application No. (US 11/547,154) discloses a light-emitting diode that emits white light, comprising: a source of radiation emission in the wavelength range between 370 nm and 420 nm; a first phosphor that emits blue light and red light, of formula: $Ba_{3(1-x)}Eu_{3x}Mg_{1-y}Mn_ySi_2O_8$, wherein $0 < x \leq 0.3$ and $0 < y \leq 0.3$; and a second phosphor that emits green light which is used as an illumination device, comprising a diode. The essential differences between the claims 11, 15, 17, and 20 of copending Application No. (US 11/547,154), and the claims 10, 13, 14, and 18 of instant application is that while the copending application is directed to an analogous composition material, the order of the claims which recites a number of the functional limitations related to the same materials presented differently and further are in the narrower scope (white-light emitting diode) than the claims in the instant application (light- converting material). It is the examiner's position that it would have been ***prima facie*** obvious to use a second phosphor emitting a green light to provide a white light in the copending Application No. (US 11/547,154). Based on the information contained in the claims it renders obvious the material composition as claimed.

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5. The subject matter claimed in the instant application is fully disclosed in the referenced copending application No. ((US 11/547,154), and would be covered by any patent granted on the copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

<u>Applicant No. US 10/533,695</u>		<u>Copending Application No. US 11/547,154</u>	
Claim	10	Claim	11
Claim	13	Claim	15
Claim	14	Claim	17
Claim	18	Claim	20

Allowable Subject Matter

6. Claims 11, 12, 15-17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Examiner Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bijan Ahvazi whose telephone number is (571)270-3449. The examiner can normally be reached on M-F 8:0-5:0. (Off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Lawrence Tarazano can be reached on 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application

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Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ling-Siu Choi/
Primary Examiner, Art Unit 1796

Bijan Ahvazi, Ph.D.
Examiner
Art Unit 4171

/BA/